IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.357 of 1997

K. Dhanalakshmi ... Appellant

-Vs-

State by:
Inspector of Factories,
Villupuram. ... Respondent.

Criminal Appeal against the judgment dated 30.12.1996 made in C.C. No.10 of 1996 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Villupuram.

!For appellant : Mr.N.Sankarasubramanian

^For respondent : Mr.A.N.Thambidurai,
Govt. Advocate (Crl. Side)

:J U D G M E N T

Appellant is the Accused in C.C.No.10 of 1996 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Villupuram. By the judgment dated 30.12.1996, Accused was convicted under Sec.6 and Sec.92 of Factories Act, 1948 r/w Rule 3 of 1950, Sec.6(1) and Sec.92 of Factories Act, 1948 r/w Rule 4 of 1950 and Sec.7(1) and Sec.92 of Factories Act, 1948 r/w Rule 12 of 1950 and imposed a fine of Rs.5,000 /- on each count; total fine amount of Rs.15,000/-.

2. The Respondent / Complainant is the Factories Inspector, Villupuram. The Appellant / Accused - Dhanalakshmi is the owner and the occupier of Sri Siva Blue Metals, where stone crushing work is being carried on. On 20.06.1996 - 3.30 p.m., Factories Inspector, Villupuram inspected Sri Siva Blue Metals. At that time, he had noted six men and five women working. The stone crushing work was being done, installing the machinery of 40 H.P. At the time of inspection, Factories Inspector noted the following violations:-

Sec.7(1) r/w Rule 12
Violation of Sec.7(1)

r/w Rule 12

Requiring previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory to be situated and for the construction or extension of any factory ;

For the purpose of considering applications for such permission the submission of plans and specifications.

Appellant / Accused has not obtained prior permission for the plan;

Nature of the plan was not submitted in violation of Sec.6(1)(b) r/w Rule 3.

Rule 6(1)(d) r/w Rule 4
Violation of Sec.6(1)(d)
r/w Rule 4
The Rule may require for the-
(i) Registration of factories or any class or description of factories,
(ii) Licensing of factories or any class or description of factories,
(iii) Fees payable for such registration and licensing and the renewal of licences.
Total amount of power installed was 40 H.P.;

Six men and five women were employed in the stone crushing unit;

Non obtaining of registration of Factories / licencing of factories and non payment of fees payable for such registration, which is in violation of Sec.6(1)(d) r/w Rule 4.

Section 7(1) imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory--

The name and situation of the factory;

The name and address of the occupier and such others.
Not sent the written notice to the Chief Inspector in the form with prescribed particulars as contemplated under Sec.7(1) within 15 days prior to occupying or using the premises as a factory; thereby violating Sec.7(1) r/w Rule 12.

All the above violations are punishable under Sec.92 of the Factories Act.

3. Complainant / Factories Inspector prepared the Inspection Report. Show cause notice was served upon the Appellant / Accused. Since no reply was forthcoming, complaint was launched against the Appellant / Accused for violations of provisions of Factories Act on three counts as noted above. The facts constituting the gist of the offences were set forth in the charge.

4. In the trial Court, when the Accused was questioned, she has admitted the offences. On her admission, the trial convicted the Accused under Ss.6 of Factories Act, 1948 r/w Rule 3 of 1950, 6(1) of Factories Act, 1948 r/w Rule 4 of 1950 and 7(1) of Factories Act, 1948 r/w Rule 12 of 1950 and imposed a fine of Rs.5,000/- on each count; total fine amount of Rs.15,000/-. Aggrieved over the imposition of fine of Rs.15,000/-, the Appellant / Accused has preferred this appeal.

5. In the Memorandum of Grounds, it is stated that for similar other Accused, the uniform fine amount of Rs.100/- is imposed and the Appellant / Accused ought to have been viewed of similar footing imposing a fine of Rs.100/-. Assailing the quantum of fine as harsh, the learned counsel for the Appellant / Accused has raised the following three contentions:-

(i) Placing reliance upon the case of State of Gujarat v. Dineshchandra (1994 CRL.L.J.1393) it is submitted that when the guilt is not pure and simple, there cannot be finding of guilty and imposition of fine;

(ii) further reliance placed upon in Kerala judgment (AIR 1958 KERALA 237) in support of the contention that for violation of Ss.6 and 7 r/w Rules 3, 4 and 12, penal provision of Sec.92 is not applicable.

(iii)On 07.11.1996, Appellant / Accused has obtained the licence for running the stone crusher, which the trial Court has not taken note of while recording the plea of guilt on 30.12.1996 and imposing fine of Rs.5,000/- on each count.

6. Pointing out that the Quarry was in full operation on the date of Inspection - 20.06.1996, the learned Government Advocate submitted that only penal provision of Sec.92 of the Act is applicable and when under

Sec.92 of the Act for any violation two years punishment and fine of Rs.1 Lakh is provided for, the trial Court has shown extreme leniency in imposing fine of Rs.5,000/- on each counts, which warrants no interference.

7. This appeal is preferred against the plea of admission of guilt. Under Sec.375 Crl.P.C., no appeal lies in cases when the Accused pleads guilty excepting to the extent or legality of the sentence. It is to be seen whether the fine amount of Rs.5,000/- on each counts on admission of plea of guilt is reasonable or excessive as contended by the Appellant / Accused.

8. We may firstly refer to the third contention urged by the Appellant / Accused. It is submitted that the Appellant has obtained the permission and licence for the quarry on 07.11.1996, which was not taken note of by the trial Court while recording the plea of guilt and imposing a fine, by judgment dated 30.12.1996.

9.

Obtaining permission / licence on 07.11.1996 would not in any way mitigate the rigor of the earlier violation. It is to be noted that the show cause notice was issued to the Accused on 02.0 7.1996 as to why she should not be prosecuted. In continuation of the show cause notice, Corrigendum was issued

to the Accused on 14.08.1 996. Despite issuance of the notices, the Appellant has not taken immediate steps to obtain licence, indicating that the initial preparation for obtaining the licence, plan and others were not ready at hand. Inspecting the premises by the authorities has its definite purpose. Safety measures would be ensured before issuance of the licence. Operating the quarry without submitting the plan and without obtaining the licence seriously endangers the life of the workers, who are employed in the Quarry. On the date of inspection i.e. on 20.06.1996 , the Complainant / Factory Inspector found six men and five women working in the premises with 40 H.P. Power installed. It is not known whether safety measures were installed. In that view of the matter, non-obtaining of licence cannot be considered to be a simple violation, which could be rectified at a later date. Further more, at the time of pleading guilty, the Appellant / Accused has not brought to the notice of the trial Court about her subsequent obtaining of the licence on 07.11.1996. When that was not brought to the notice of the trial Court, now it is not open to the Appellant to urge this contention before this Court.

10. The decision in 1994 CRL.L.J.1393 was a case of repetition of the offence and conviction under Sec.94 of the Factories Act. In that view of the matter, in the facts and circumstances of the case, the Court found that the plea of guilty was not a pure and simple but a 'composite plea of guilty'. By perusal of the records of the case in hand, it is seen that the entire facts containing the gist of the offence were set forth in the charge and the Accused was questioned on 08.12.1996. All the essential details are clearly set forth in the charge and the Accused had admitted the offence. The admission of guilt is a simple one and not a composite one as was the case before the Gujarat High Court. The said decision cannot be applied to the facts of this case.

11. The learned counsel for the Appellant / Accused has contended that the penal provision of Sec.92 is not applicable for violation of Ss.6 and 7 r/w Rules 3, 4 and 12. This contention also has no merits. Sec.92 is the penal provision "for contravention of any of the provision of this Act or of any Rule made thereunder or of any order in writing thereunder". Sec.92 is the general penal provision for the offences and Chapter 1 is nowhere excluded from the operation of Sec.9 2. In the decision relied upon by the Accused in the case of V.M. Patel v. Inspector of Factories (AIR 1958 KERALA 237), the premises related to Gujarat Travancore Agency to which the provision of the Factories Act was not then applicable. In that view of the matter, the Kerala High Court held that the requirements of Ss.6 and 7 of the Act r/w Rules 3, 4 and 12 and the Rules framed thereunder are not punishable under Sec.92 of the Act regarding the premises in question. That decision cannot be made applicable to the case in hand, where Sri Siva Blue Metal Unit is clearly covered under the provisions of the Factories Act to which penal provision of Sec.92 is applicable.

12. Sec.92 of the Factories Act contemplates imprisonment for a term of two years or with fine which may extend to Rupees One Lakh or with both. Since violations of the provisions are serious offence, huge fine amount of Rupees One Lakh is contemplated for such violation of the provisions. When the licence was not obtained, nor the plan was submitted for

approval, the same cannot be viewed as lesser offence. The trial Court has shown extreme leniency in imposing Rs.5,000/- on each counts. It cannot be said to be excessive or unreasonable. This appeal has no merits and is bound to fail.

13. Therefore, the conviction of the Appellant / Accused in C.C.No.10 of 1996 (dated 30.12.1996) and the quantum of fine are confirmed. This appeal is dismissed.

Index: Yes
Internet: Yes

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To

1.The Addl. Sessions Judge -cum-
Chief Judicial Magistrate,
Villupuram.

2 Through, the Principal District and
Sessions Judge, Villupuram.

3.The Inspector of Factories,
Villupuram.

4.The Public Prosecutor,
High Court, Chennai.